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Issue date: 08Nov2001

CASE NO.: 2000-BLA-00038

In the Matter of

DENNIS DEETER

Claimant

v.

DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS

Party-in-Interest

Appearances:

Helen M. Koschoff, Esquire
For Claimant

Leon E. Pasker, Esquire
For Director

Before: ROBERT D. KAPLAN
Administrative Law Judge

DECISION AND ORDER
(UPON REMAND BY THE BENEFITS REVIEW BOARD)

This proceeding arises from a claim for benefits under the Black Lung Benefits Act, 30 U.S.C. §§ 901, et seq., (the Act) and the regulations issued thereunder, which are found in Title 20 of the Code of Federal Regulations.[1]

On March 17, 2000, I issued a Decision and Order (ALJ D&O) in which I denied benefits based on the determination that Claimant had failed to establish that he is totally disabled due to a respiratory condition. More specifically, I found that Claimant failed to prove total disability pursuant to the regulations at § 718.204(b) because he had failed to establish that his current non-coal mining employment is not

[1]Unless otherwise noted, the regulations referred to herein are the revised regulations effective January 19, 2001, found at 20 C.F.R. Part 718 (2000).

comparable to his prior coal mine employment. Claimant appealed to the Benefits Review Board (the Board). On April 20, 2001, the Board issued a Decision and Order (Board D&O) in which it vacated my determination and remanded the case to me for further consideration. BRB No. 00-0712 BLA. The Board ruled that I erred in concluding that Claimant bore the burden of establishing that his current employment is not comparable to his coal mine employment. (Board D&O at 4-7) The Board also held that I should reconsider my determination that Claimant had established a coal mine employment of "at least 10 years." (ALJ D&O at 3-4; Board D&O at 7-8)

I received the file from the Board on August 2, 2001. Because the Board ruled that I had erroneously placed the burden of proof on Claimant with regard to whether his current non-coal mining employment is not comparable to his prior coal mine employment, on August 2, 2001, I issued an order allowing Director to submit the Statistical Abstract of the United States or any other evidence to determine the average hourly wage of a coal miner in the year 2000, the year in which the hearing before me had been held. However, Director did not submit such evidence. I therefore find that Director has waived any contention that Claimant's post-coal mine employment is comparable to his coal mine employment, pursuant to § 718.204(b).

Based on the foregoing, I shall consider all the issues relevant to whether Claimant is entitled to benefits.

I. ISSUES

The specific issues presented for resolution are:

1. The length of Claimant's coal mine employment.

2. Whether Claimant has pneumoconiosis as defined by the Act and the regulations.

3. Whether Claimant's pneumoconiosis arose out of coal mine employment.

4. Whether Claimant is totally disabled.

5. Whether Claimant's disability is due to pneumoconiosis.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The procedural and factual backgrounds of this case are set forth in my prior determination. (ALJ D&O at 2)[2]

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[2] The following abbreviations are used herein: "DX" refers to Director's Exhibit; "CX" refers to Claimant's Exhibit; "T" refers to the transcript of the February 14, 2000, hearing.

A. Coal Mine Employment History

Claimant continues to contend that he has a coal mine employment history totaling 25 years. Director originally conceded a total of 5.8 years, based on Claimant's Social Security earnings record. (DX 23; T 9) In Director's brief filed prior to my earlier determination he stated that Claimant has failed to establish "in excess of 10 years...." In Director's current brief he concedes that Claimant has established a coal mine employment totaling 14.75 years. (Director's Brief, p. 2)

Claimant testified that he was engaged in coal mine employment with the following employers who appear in his Social Security earnings record (DX 7):

- Hegins Mining Co.
- Herring Bros. & Lucas Coal Co.
- Williamson Coal Co.
- Earl Bush
- Barren Coal Co.
- RC&R Coal
- New Lincoln Coal Co.

Claimant testified that, in addition, he was self-employed in coal mining in 1974, 1976, 1993, 1994, and 1995. Further, Claimant stated that he was employed in coal mining by two employers who do not appear in his Social Security Earnings Record: Frailey for three months in 1976, and Wolfgang Brothers from 1976 to 1983. (T 12-13)

Claimant's Social Security earnings record establishes the following coal mine employment:

1971	–	2 quarters of earnings over $50
1972	–	4 quarters of earnings over $50
1973	–	3 quarters of earnings over $50
1974	–	2 quarters of earnings over $50
1976	–	2 quarters of earnings over $50
1978	–	4 quarters based on total earnings of $6,239
1983	–	2 quarters based on total earnings of $1,020
1985	–	3 quarters based on total earnings of $5,140
1986	–	3 quarters based on total earnings of $4,860
1987	–	3 quarters based on total earnings of $4,180
1988	–	3 quarters based on total earnings of $4,620
1989	–	3 quarters based on total earnings of $4,460
1990	–	3 quarters based on total earnings of $4,260
1991	–	3 quarters based on total earnings of $4,680
1992	–	3 quarters based on total earnings of $3,680
1993	–	3 quarters based on total earnings of $4,130

1994	–	3 quarters based on total earnings of $4,736
1995	–	3 quarters based on total earnings of $5,170

Thus, the Social Security earnings record establishes a total of 52 quarters, or 13 years of coal mine employment.

I find that the Social Security earnings record constitutes the best evidence of Claimant's coal mine employment. However, I accept Director's concession that Claimant has established a greater coal mine employment history, totaling 14.75 years. Based on the foregoing, I find that Claimant has established a coal mine employment history of 14.75 years.

B. Entitlement

Because this claim was filed after the enactment of the Part 718 regulations, Claimant's entitlement to benefits will be evaluated under Part 718 standards. § 718.2. In order to establish entitlement to benefits under Part 718, Claimant must prove that he has pneumoconiosis, that it arose out of his coal mine employment, and that the pneumoconiosis has caused him to be totally disabled. Claimant has the burden of establishing each element of entitlement by a preponderance of the evidence. Director, OWCP v. Greenwich Collieries, 512 U.S. 267 (1994).

The Department of Labor has issued new Part 718 regulations, most of which are effective with regard to claims pending on January 19, 2001. However, the new quality standards apply only to evidence developed after January 19, 2001. § 718.101(b).

1. Proof of Pneumoconiosis

There are four means of establishing the existence of pneumoconiosis, set forth at § 718.202(a)(1) through (4):

a. X-ray evidence. § 718.202(a)(1).

b. Biopsy or autopsy evidence. § 718.202(a)(2).

c. Regulatory presumptions. § 718.202(a)(3).

(1) § 718.304 - Irrebuttable presumption of total disability due to pneumoconiosis if there is evidence of complicated pneumoconiosis.

(2) § 718.305 - Where the claim was filed before January 1, 1982, there is a rebuttable presumption of total disability due to pneumoconiosis if the miner has proven 15 years of coal mine employment and there is other

evidence demonstrating the existence of a totally disabling respiratory or pulmonary impairment.

(3) § 718.306 - Rebuttable presumption of entitlement applicable to cases where the miner died on or before March 1, 1978, and was employed in one or more coal mines prior to June 30, 1971.

d. Physicians' opinions based upon objective medical evidence. § 718.202(a)(4).

The U.S. Court of Appeals for the Third Circuit has held that, in considering whether the presence of pneumoconiosis has been established, "all types of relevant evidence must be weighed together to determine whether the claimant suffers from the disease." Penn Allegheny Coal Co. v. Williams, 114 F.3d 22 (3d Cir. 1997).[3]

X-ray evidence, § 718.202(a)(1)

Under § 718.202(a)(1) the existence of pneumoconiosis can be established by chest X-rays conducted and classified in accordance with § 718.102. The record contains the X-ray interpretations summarized in the following table[4]:

DATE OF X-RAY	DATE READ	EX. NO.	PHYSICIAN	RADIOLOGICAL CREDENTIALS	INTERP.
4/20/99	4/20/99	DX 13	Kraynak	None	1/1
"	5/22/99	DX 12	Barrett	BCR, B	Negative
"	7/26/99	CX 5	Ahmed	BCR, B	1/1
"	7/28/99	CX 7	Pathan	B	1/1
"	8/2/99	CX 9	Cappiello	BCR, B	1/1
"	8/2/99	CX 11	Miller	BCR, B	1/0

[3] This cases arises in the jurisdiction of the Third Circuit because Claimant's coal mine employment took place in Pennsylvania.

[4] A B-reader ("B") is a physician who has demonstrated a proficiency in assessing and classifying X-ray evidence of pneumoconiosis by successful completion of an examination conducted by the United States Public Health Service. 42 C.F.R. § 37.51. A physician who is a Board-certified radiologist ("BCR") has received certification in radiology or diagnostic roentgenology by the American Board of Radiology, Inc., or the American Osteopathic Association. 20 C.F.R. § 727.206(b)(2)(iii).

DATE OF X-RAY	DATE READ	EX. NO.	PHYSICIAN	RADIOLOGICAL CREDENTIALS	INTERP.
"	8/6/99	CX 13	Aycoth	B	1/1
"	12/6/99	DX 27	Sargent	BCR, B	Negative

It is well-established that the interpretation of an X-ray by a B-reader may be given additional weight by the fact finder. Aimone v. Morrison Knudson Co., 8 BLR 1-32, 34 (1985); Martin v. Director, 6 BLR 1-535, 537 (1983); Sharpless v. Califano, 585 F.2d 664, 666-67 (4th Cir. 1978). The Board has also held that the interpretation of an X-ray by a physician who is a B-reader as well as a Board-certified radiologist may be given more weight than that of a physician who is only a B-reader. Scheckler v. Clinchfield Coal Co., 7 BLR 1-128, 131 (1984).

The record contains six positive interpretations and only two negative interpretations of the April 20, 1999 X-ray. (Dr. Barrett, who interpreted the film as negative on May 22, 1999, also stated it was negative on December 6, 1999: DX 28) Five of the six positive interpretations are by well-qualified physicians. I therefore find that the X-ray evidence supports a finding that Claimant has pneumoconiosis.

Biopsy or autopsy evidence, § 718.202(a)(2)

A determination that pneumoconiosis is present may be based on a biopsy or autopsy. § 718.202(a)(2). That method is unavailable here, because the record contains no such evidence.

Regulatory presumptions, § 718.202(a)(3)

A determination of the existence of pneumoconiosis may also be made using the presumptions described in §§ 718.304, 718.305 and 718.306. Section 718.304 requires X-ray, biopsy, or equivalent evidence of complicated pneumoconiosis which is not present in this case. Section 718.305 is not applicable because this claim was filed after January 1, 1982. § 718.305(e). Section 718.306 is only applicable in the case of a deceased miner who died before March 1, 1978. Since none of these presumptions are applicable, the existence of pneumoconiosis has not been established under § 718.202(a)(3).

Physicians' opinions, § 718.202(a)(4)

The fourth way to establish the existence of pneumoconiosis under § 718.202 is set forth as follows in subparagraph (a)(4):

> A determination of the existence of pneumoconiosis may also be made if a physician, exercising sound medical judgment, notwithstanding a negative X-ray, finds that the miner suffers or suffered from

> pneumoconiosis as defined in § 718.201. Any such finding shall be based on objective medical evidence such as blood gas studies, electrocardiograms, pulmonary function studies, physical performance tests, physical examination, and medical and work histories. Such a finding shall be supported by a reasoned medical opinion.

Section 718.201(a) defines pneumoconiosis as "a chronic dust disease of the lung and its sequelae, including respiratory and pulmonary impairments, arising out of coal mine employment" and "includes both medical, or 'clinical', pneumoconiosis and statutory, or 'legal', pneumoconiosis." Sections 718.201(a)(1) and (2) define clinical pneumoconiosis and legal pneumoconiosis. Section 718.201(b) states:

> [A] disease "arising out of coal mine employment" includes any chronic pulmonary disease or respiratory or pulmonary impairment significantly related to, or substantially aggravated by, dust exposure in coal mine employment.

In addition, § 718.201(c) provides that pneumoconiosis is a "latent and progressive disease which may first become detectable only after the cessation of coal mine dust exposure."

Drs. Raymond Kraynak and Matthew Kraynak opined that Claimant suffers from pneumoconiosis. (DX 10; CX 2, 19) The record contains no contrary opinion of any physician.

Weighing the Medical Evidence, § 718.202(a)

As noted, the X-ray evidence is overwhelmingly positive for pneumoconiosis. Moreover, the opinions of Drs. Raymond and Matthew Kraynak that Claimant has pneumoconiosis are uncontradicted and are reasoned because they are based on their clinical findings, Claimant's symptoms, and his vocational history (see pages 9-11, infra). Based on the consideration of all the relevant evidence, I find that the presence of pneumoconiosis has been established, pursuant to § 718.202(a).

2. Pneumoconiosis Arising out of Coal Mine Employment

Claimant must next establish that his pneumoconiosis arose at least in part out of coal mine employment. § 718.203(a). Miners with a coal mining history of at least 10 years benefit from a rebuttable presumption that the pneumoconiosis arose out of such employment. § 718.203(b). Claimant has established 14.75 years of coal mine employment. Therefore, he is entitled to the presumption in § 718.203(b). The record contains no evidence rebutting the presumption that Claimant's coal mine employment caused his pneumoconiosis. Therefore, I find that Claimant has established that his pneumoconiosis arose out of coal mine employment.

3. Total Disability

Claimant must next establish that he is totally disabled due to a respiratory or pulmonary condition. Total disability is defined in § 718.204(b)(1) as follows:

> [A] miner shall be considered totally disabled if the miner has a pulmonary or respiratory impairment which, standing alone, prevents or prevented the miner (i) From performing his or her usual coal mine work; and (ii) From engaging in [other] gainful employment ....

Nonpulmonary and nonrespiratory conditions which cause an "independent disability unrelated to the miner's pulmonary or respiratory disability" have no bearing on total disability under the Act. § 718.204(a). See also Beatty v. Danri Corp., 16 BLR 1-1 (1991), aff'd as Beatty v. Danri Corp. & Triangle Enterprises, 49 F.3d 993, 1000 (3d Cir. 1995). However, the new § 718.204(a) further provides:

> If, however, a nonpulmonary or nonrespiratory condition or disease causes a chronic respiratory or pulmonary impairment, that condition or disease shall be considered in determining whether the miner was totally disabled [under the Act].

Section 718.204(b)(2) sets forth the criteria for establishing total disability. A presumption of total disability is not established by a showing of evidence qualifying under a subsection of § 718.204(b)(2), but rather such evidence shall establish total disability in the absence of contrary evidence of greater weight. *See* Gee v. W.G. Moore & Sons, 9 BLR 1-4 (1986). All medical evidence relevant to the question of total disability must be weighed, like and unlike together, with Claimant bearing the burden of establishing total disability by a preponderance of the evidence. Rafferty v. Jones & Laughlin Steel Corp., 9 BLR 1-231 (1987).

Claimant may establish total disability by four kinds of evidence: pulmonary function study; arterial blood gas study; evidence of cor pulmonale with right-sided congestive heart failure; and reasoned medical opinion. § 718.204(c)(1)-(4) and § 718.204(b)(2)(i)-(iv).

In order to establish total disability through pulmonary function tests (i.e., by "qualifying" tests), the FEV_1 must be equal to or less than the values listed in Table B1 (males) or Table B2 (females) of Appendix B to this part and, in addition, the tests must reveal either: (1) values equal to or less than those listed in Table B3 (males) or Table B4 (females) for the FVC test, or (2) values equal to or less than those listed in Table B5 (males) Table B6 (females) for the MVV test or, (3) a percentage of 55 or less when the results of the FEV_1 test are divided by the results of the FVC test. §§ 718.204(c)(1)(i)-(iii) and 718.204(b)(2)(i)(A)-(C).

The record contains a number of pulmonary function studies which must be weighed in accordance with §§ 718.204(c)(1) and 718.204(b)(2)(i) 2001). The pulmonary function studies of record are summarized below:

DATE	EX. NO.	PHYSICIAN	AGE	FEV_1	FVC	MVV	FEV_1/ FVC	EFFORT	QUALIFIES
4/20/99	DX 11	R. Kraynak	45	2.11	2.98	79	70%	Good	No
6/28/99	CX 1	M. Kraynak	45	1.24	2.45	47	50%	Good	Yes
8/5/99	CX 4	Ressler Ctr.	45	1.85	2.08	40	89%	Good	Yes

Assessment of pulmonary function study results are dependent on Claimant's height, which was recorded as 65 inches. I have used that height in evaluating the studies. Protopappas v. Director, 6 BLR 1-221 (1983).

Total disability may also be established with arterial blood gas tests showing values listed in Appendix C. §§ 718.204(c)(2) and 718.204(b)(2)(ii). The blood gas studies of record are summarized below:

DATE	EX. NO.	PHYSICIAN	pCO_2	pO_2	QUALIFIES
4/20/99	DX 11	R. Kraynak	45 31*	80 107*	No No*

*post-exercise

Under §§ 718.204(c)(3) and 718.204(b)(2)(iii), total disability can be established where the miner has pneumoconiosis and the medical evidence shows that he suffers from cor pulmonale with right-sided congestive heart failure. There is no record evidence of cor pulmonale with right-sided congestive heart failure. Therefore, Claimant has failed to establish total disability under §§ 718.204(c)(3) and 718.204(b)(2)(iii).

The remaining means of establishing total disability is with the reasoned medical judgment of a physician that Claimant's respiratory or pulmonary condition prevents him from engaging in his usual coal mine work or comparable and gainful work. Such an opinion must be based on medically acceptable clinical and laboratory diagnostic techniques. §§ 718.204(c)(4) and 718.204(b)(2)(iv).

Only Drs. Raymond Kraynak (Claimant's treating physician) and Dr. Matthew Kraynak provided opinions regarding whether Claimant is totally disabled. In his report on Form CM-988, based on his examination on April 20, 1999, Dr. Raymond Kraynak (Board eligible in family medicine) stated that Claimant had a moderate respiratory impairment and could perform light work but he was unable to do his

last job in coal mining. Dr. Kraynak referred to the ventilatory study performed on April 20, 1999 and stated that the arterial blood gas study performed on that date was normal. The physician stated that Claimant had increased A-P diameter and wheezing. (DX 10) In a report dated July 26, 1999, Dr. Raymond Kraynak opined that Claimant was capable of performing his current job involving light exertion, but that he could not do his job as an underground coal miner. Dr. Kraynak stated that his examination of Claimant revealed cyanotic lips and scattered wheezes.(CX 2) The physician reiterated his opinions in his deposition on January 14, 2000. At that time he referred to all four laboratory studies of record. He also testified that Claimant had cyanotic lips and a smoking history of ½ pack per day for 20 years, ending one year earlier. He opined that Claimant's smoking history did not contribute to his respiratory disability. (CX 19)

Dr. Matthew Kraynak (Board certified in family medicine) issued a report dated July 26, 1999. The physician stated that he had treated Claimant and that Claimant was engaging in work of "light duty," but that he was unable to perform arduous work such as his usual coal mine employment, due to coal worker's pneumoconiosis. Dr. Matthew Kraynak stated that Claimant had cyanotic lips and scattered wheezes. The physician also referred to the ventilatory study of June 28, 1999. (CX 2)

The opinions of Drs. Raymond and Matthew Kraynak constitute evidence that Claimant has a totally disabling respiratory condition, despite being able to perform light work. Claimant himself testified that his coal mine employment involved timbering, drilling, shoveling, and the lifting and carrying of things weighing 100 pounds or more. Claimant stated that his employment at Frank's Electric Construction, Inc., beginning in 1996, in which he runs electric wire and does plumbing work, does not involve lifting heavy things and is "easy work." (T 14-16)

Turning to an evaluation of all the medical evidence, I first note that the arterial blood gas study of record was described as normal by Dr. Raymond Kraynak. Although the April 1999 ventilatory study does not qualify to establish total disability under the Act, the physician stated that this study indicates a severe air flow defect. (DX 9) The results of the two ventilatory studies performed in June and August 1999 are qualifying under the regulations. Dr. Kucera (Board certified in internal medicine and pulmonary disease) found the June 1999 study to be invalid due to "increased variability" and the August 1999 study to be invalid due to "excessive variability." (DX 29) Dr. Prince (Board certified in internal medicine and pulmonary disease) found all three ventilatory studies to be valid. (CX 17, 21, 22) Dr. Raymond Kraynak stated his disagreement with Dr. Kucera's opinion that the June and August studies are not valid. (CX 19, 20) Dr. Matthew Kraynak stated that he disagreed with the opinion of Dr. Kucera that the June study is not valid. (CX 15)

Director argues that the drop in the values attained in the qualifying June and August 1999 ventilatory studies after the April 1999 study "gives ample reason to question the accuracy of these later findings." (Director's Brief, p. 8) However, the record contains no opinion of a physician that this constitutes a basis for invalidating the June and August studies. Be that as it may, the April 1999 study has not been invalidated and it resulted in values that are well below the predicted values, according to Dr. Raymond Kraynak. (DX 9) Indeed, Dr. Prince found the April study to be valid. (CX 17) Nor does the

normal arterial blood gas study contradict the April ventilatory study, as the two types of studies measure different physiologic processes. I therefore find that even were the June and August studies to be disregarded, the April study supports a finding of total disability.

Director argues that the opinions of Dr. Raymond Kraynak and Dr. Matthew Kraynak should be discounted because they relied on invalid ventilatory studies. However, Director does not mention that the invalidations by Dr. Kucera were contradicted by a physician of equivalent qualifications, Dr. Prince. At any rate, as noted above, the valid below-normal April 1999 ventilatory study supports the opinions of the Drs. Kraynak. Further, these physicians also relied on other objective clinical findings such as Claimant's wheezing, cyanotic lips, and increased A-P diameter. These findings are nowhere contradicted in the record. Finally, the physicians relied on Claimant's respiratory symptoms, another uncontradicted fact. In sum, even if the June and August 1999 ventilatory studies are invalid, the opinions of the Drs. Kraynak are supported by the April 1999 study, the physicians' clinical findings and Claimant's symptoms. I therefore find that their opinions are reasoned and documented.

Based on the foregoing consideration of all the relevant evidence together, I find that Claimant has established that he is totally disabled due to a pulmonary or respiratory condition, pursuant to § 718.204(b)(1).[5]

4. Total Disability Due To Pneumoconiosis

Claimant need not prove that pneumoconiosis is the primary cause of his total disability, but his burden is to establish by a preponderance of the evidence total respiratory or pulmonary disability due to pneumoconiosis. Section 718.204(c)(1) (effective January 19, 2001) provides:

> A miner shall be considered totally disabled due to pneumoconiosis if pneumoconiosis, as defined in § 718.201, is a substantially contributing cause of the miner's totally disabling respiratory or pulmonary impairment....

Further, § 718.204(c)(1) states that "substantially contributing cause" is established if the pneumoconiosis

> (i) has a material adverse effect on the miner's respiratory or pulmonary conditions; or (ii) materially worsens a totally disabling respiratory or pulmonary impairment which is caused by a disease or exposure unrelated to coal mine employment.

Also see Bonessa v. United States Steel Corp., 884 F.2d 726, 734 (3d Cir. 1989).

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[5]Director simply failed to present any significant evidence (other than the invalidations by Dr. Kucera) to rebut Claimant's *prima facie* case. Director also failed to take advantage of the opportunity provided in my order of August 2, 2001, to submit evidence regarding the import of Claimant's earnings in his current employment (see page 2, above).

Drs. Raymond and Matthew Kraynak both opined that Claimant is totally disabled due to his pneumoconiosis. The record contains no contrary evidence. Therefore, I find that this element has been established.

III. CONCLUSION

As Claimant has established all requisite elements of entitlement under the Act, his claim for benefits must be granted.

COMMENCEMENT OF BENEFITS

As I have found Claimant is totally disabled due to pneumoconiosis arising out of his coal mine employment, he is entitled to black lung benefits. Benefits are payable to a miner who is totally disabled due to pneumoconiosis beginning with the month of onset of total disability due to pneumoconiosis. For Part C claims, in no case may benefits be paid for periods earlier than January 1, 1974. Where onset cannot be determined, benefits commence with the date the claim was filed or January 1, 1974, whichever is later.§ 725.503(b). Foley v. Director, OWCP, 7 BLR 1-896 (1985). I find that the evidence of record does not establish the date of onset of Claimant's disability. Therefore, benefits shall commence as of February 1999, the month and year in which the claim was filed. Claimant has no dependents for the purpose of augmentation of benefits.

ATTORNEY FEE

No award of attorney's fees for services to Claimant is made herein because no fee application has been received. Thirty (30) days is hereby allowed Claimant's counsel for the submission of a fee application which must conform to subsections 725.365 and .366 of the regulations. A service sheet showing that service has been made upon all parties including Claimant must accompany the application. Parties have ten (10) days following receipt of any such application within which to file any objection. The Act prohibits the charging of a fee in the absence of an approved application.

ORDER

The claim of Dennis Deeter for benefits under the Act is AWARDED. Benefits shall commence as of February 1999.

A

Robert D. Kaplan
Administrative Law Judge

Cherry Hill, New Jersey

NOTICE OF APPEAL RIGHTS: Pursuant to 20 C.F.R. §725.481, any party dissatisfied with this Decision and Order may appeal it to the Benefit Review Board within 30 (thirty) days from the date of this Decision by filing a Notice of Appeal with the Benefits Review Board at P.O. Box 37601, Washington, D.C. 20013-7601. A copy of this Notice of Appeal must also be served on Donald S. Shire, Associate Solicitor for Black Lung Benefits, 200 Constitution Avenue, N.W., Room N-2117, Washington, D.C., 20210.